

## TITLE ELEVEN.

### Crimes and Offences, Proceedings in Criminal Cases, Punishments and incidental provisions.

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- CHAP. 117. Offences against the sovereignty of the state.
- 118. Offences against the lives and persons of individuals.
  - 119. Offences against habitations and other buildings.
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## CHAPTER 117.

### OFFENCES AGAINST THE SOVEREIGNTY OF THE STATE.

- SEC. 1. Treason, its definition, proof, and punishment.
- 2. Misprision of treason, its definition, proof and punishment.
  - 3. Limitation of prosecutions therefor to three years.
  - 4. Usurpation of jurisdiction by a foreign power.

SEC. 1. Treason consists in levying war against the state, adhering to its enemies, and giving them aid and comfort. No person can be convicted of it without the testimony of two witnesses to the same overt act, or confession in open court. Its punishment is death.

Treason, its  
definition,  
proof, and  
punishment.  
R. S. c. 117, § 1.

CHAP. 117. SEC. 2. Misprision of treason consists in a knowledge that treason has been, or is to be committed, and in the concealment of it, or omission to give information thereof to the governor, a judge of a court of record, or a justice of the peace. No person can be convicted of it without the testimony of two witnesses, but one of them may be to one, and another to a different overt act of the same species of treason; or by confession in open court. It shall be punished by imprisonment not exceeding five years, or by fine not exceeding one thousand dollars.

Limitation of prosecutions to three years. R. S. c. 117, § 3. SEC. 3. No person can be convicted of treason or misprision of treason unless the indictment therefor is found within three years after the commission thereof.

Usurpation of jurisdiction by a foreign power. R. S. c. 117, § 4. SEC. 4. If a person, claiming authority from any foreign government or magistrate, enters upon any lands, cuts any timber, serves any process, or exercises any jurisdiction, authority, or ownership, claims any right, or threatens to do any of said acts within the limits of this state, as described by the treaties of seventeen hundred and eighty-three and eighteen hundred and forty-two, between the United States and Great Britain, he and every person aiding and encouraging the same shall be punished by imprisonment and fine, at the discretion of the court, according to the aggravation of the offence.

## CHAPTER 118.

## OFFENCES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

- Sec. 1. Murder defined.
2. Murder of the first degree defined and punished.
  3. Murder of the second degree defined and punished.
  4. Degree of murder how ascertained.
  5. Manslaughter defined and punished.
  6. Willful disturbance or obstruction of a railroad, by which human life is destroyed, murder of second degree, if not, how punished.
  7. Misconduct or gross neglect respecting steam in steamboats occasioning loss of life or danger of it.
  8. Murder of the first degree by duelling defined.
  9. Murder of the first degree by a second to such duel.
  10. Conviction or acquittal in another state a bar to an indictment under eighth, ninth, and thirteenth sections.
  11. Fighting, challenging, or aiding a duel.
  12. Accepting a challenge or aiding it.
  13. Leaving the state to elude provisions of the two preceding sections, and doing such acts out of the state.
  14. Posting for not fighting a duel, or sending or accepting a challenge.
  15. Maim defined and punished.
  16. Robbery defined and punished.
  17. Rape defined and punished.
  18. Abduction defined and punished.
  19. Forcible confinement, kidnapping, selling as a slave.
  20. Abandonment of children.
  21. Apprentices and minors carried out of the state by masters of vessels.
  22. Enlistment of minors into army of United States.
  23. Extortion or compulsion by threats.
  24. Assault with intent to commit a rape.
  25. Assault with intent to murder, kill, maim, rob, steal, or to commit arson or burglary.
  26. Assault with intent to commit other felonies.
  27. Attempts to murder or kill without assault.
  28. Assaults, and assaults and batteries.
  29. Slaves voluntarily brought into the state, free. Punishment for restraining such.

SEC. 1. Murder is the unlawful killing of a human being with malice aforethought, either express or implied. (a)

Murder defined.  
R. S. c. 118, § 1.

SEC. 2. When murder is committed with express malice aforethought, or in perpetrating or attempting to perpetrate a crime punishable by death, imprisonment for life, or for an unlimited term of

Murder of the first degree defined and punished.  
R. S. c. 118, § 2.

CHAP. 118. years, it shall be deemed murder of the first degree and punished with death. (a)

Murder of the second degree defined and punished. R. S. c. 118, § 3. SEC. 3. When murder is committed otherwise than is set forth in the preceding section, it shall be deemed murder of the second degree, and punished by imprisonment for life. (b)

Degree of murder how ascertained. R. S. c. 118, § 4. SEC. 4. The jury, finding a person guilty of murder, shall find whether he is guilty of murder in the first or second degree. When a person is found guilty of murder by confession in open court, the court, from testimony, shall determine the degree of murder, and sentence accordingly.

Manslaughter defined and punished. R. S. c. 118, § 5. 32 Me. 369. 33 Me. 48. SEC. 5. Whoever unlawfully kills a human being in the heat of passion, on sudden provocation, without express or implied malice aforethought, or commits manslaughter as defined by the common law, shall be punished by imprisonment not more than ten years, or by fine not exceeding one thousand dollars.

Willful disturbance or obstruction of a railroad by which human life is destroyed, &c. R. S. c. 118, § 6. SEC. 6. Whoever willfully and maliciously displaces a switch or rail, disturbs, injures, or destroys, any part of a track or bridge of any railroad, or places any obstruction thereon, with intent that any person or property passing on the same should be thereby injured, and human life is thereby destroyed, shall be deemed guilty of murder of the second degree, and punished accordingly. If human life is thereby endangered and not destroyed, or property is injured, he shall be punished by solitary imprisonment not less than thirty days, and afterwards to hard labor not more than twenty, nor less than five years.

Misconduct and gross neglect respecting steam in steamboats, &c. R. S. c. 118, § 7. SEC. 7. Any person, having charge of a steamboat used for conveyance of passengers, or of the boiler or other apparatus for generating steam therein, who, through ignorance, gross neglect, or for the purpose of racing, creates or allows to be created such a quantity of steam as to break such boiler, apparatus, or machinery connected therewith, and thereby human life is destroyed, shall be punished by imprisonment not more than four, nor less than two years; and if human life is endangered and not destroyed, by imprisonment less than one year, and by fine not exceeding two hundred and fifty dollars.

Murder of the first degree by dueling, defined and punished. R. S. c. 118, § 8. SEC. 8. Any person residing in this state, who within it engages to fight a duel and fights such duel without the state, and thereby inflicts a mortal wound on any person, of which he dies in this state, shall be deemed guilty of murder of the first degree, and punished accordingly; and he may be indicted and tried in the county where the death happened.

The same by a second to such duel. R. S. c. 118, § 9. SEC. 9. A person, who, by an engagement made in the state, is the second to either party in such duel and present when a mortal wound is inflicted, of which the person dies within the state, shall be

(a) 37 Me. 468; 39 Me. 54, 78; 51 Me. 206.  
(b) 39 Me. 78.

## CHAP. 119.

## CHAPTER 119.

## OFFENCES AGAINST HABITATIONS AND OTHER BUILDINGS.

- SEC. 1. Arson of a dwellinghouse in the night and day time. Punishment.
2. Arson of a dwellinghouse owned in whole or in part by himself. Punishment.
3. Burning of public and private buildings in the night and day time. Punishment.
4. Burning of other buildings, vessels, locks, dams, and flumes. Punishment.
5. Burning of produce, trees, and other property. Punishment.
6. Wife liable though property burnt is her husband's.
7. Burglary defined and punished.
8. Breaking and entering a dwellinghouse in the day time, entering it in night time, breaking and entering other buildings and vessels. Punishment.
9. Dwellinghouse defined.

Arson of a dwellinghouse.  
R. S. c. 119,  
§ 1.

SEC. 1. Whoever willfully and maliciously sets fire to the dwellinghouse of another, or to any building adjoining thereto, or to any building owned by himself or another, with the intent to burn such dwellinghouse, and it is thereby burnt, in the night time, shall be punished with death. If he proves, and the jury find, that there was no person lawfully in such dwellinghouse at the time, or if the offence was committed in the day time, he shall be punished by imprisonment for life.

Arson of a dwellinghouse owned by himself.  
R. S. c. 119,  
§ 2.

SEC. 2. Whoever willfully and maliciously sets fire to a dwellinghouse owned wholly or partly by himself, or to any other building owned by himself or another, with intent to burn such dwellinghouse, another person being lawfully therein, and it is thereby burnt, shall be punished by imprisonment for life.

Burning of public and private buildings.  
R. S. c. 119,  
§ 3.  
12 Me. 214.

SEC. 3. Whoever willfully and maliciously sets fire to any meeting house, court house, jail, town house, college, academy, or other building erected for public use, or to any store, shop, office, barn, or stable of another within the curtilage of a dwellinghouse, so that it is thereby endangered, and such public or other building is thereby burnt in the night time, shall be punished by imprisonment for life, or any term of years; but if such offence was committed in the day time, or without the curtilage of, and without endangering a dwellinghouse, by imprisonment not less than one, nor more than ten years.

Burning of other buildings, vessels, &c.  
R. S. c. 119,  
§ 4.

SEC. 4. Whoever willfully and maliciously burns any building of another not mentioned in the preceding section, or any vessel, bridge, lock, dam, or flume, of another, shall be punished by imprisonment not less than one, nor more than ten years.

Burning of produce, trees, and other

SEC. 5. Whoever willfully and maliciously burns any corn, grain, hay, vegetables, or other produce, or any soil, trees, underwood, or

other property of another, shall be punished by imprisonment not less than one, nor more than three years. CHAP. 119.

SEC. 6. The preceding sections are applicable to a married woman, committing either of such offences without the consent of her husband, though the property set on fire and burnt belonged wholly or in part to him. property.  
R. S. c. 119,  
§ 5.  
Wife liable  
though prop-  
erty burnt is  
her husband's.  
R. S. c. 119,  
§ 6.

SEC. 7. Whoever breaks and enters in the night time, with intent to commit a felony, or, having entered with such intent, breaks, in the night time, a dwellinghouse, any person being then lawfully therein, shall be deemed guilty of burglary; and if armed with a dangerous weapon before or after entering, or if he assaults any person lawfully therein, or has any confederate present aiding or abetting, he shall be punished by imprisonment for life; otherwise by imprisonment for life or any term of years; and all burglar's tools or implements prepared or designed for committing the crime of burglary, shall be dealt with as provided in section eight of chapter one hundred and twenty-five. Burglary de-  
fined and pun-  
ished. Burg-  
lars' tools how  
dealt with.  
R. S. c. 119,  
§ 7.  
1861, c. 23.

SEC. 8. Whoever, with intent to commit a felony, breaks and enters in the day time, or enters without breaking, in the night time, any dwellinghouse; or breaks and enters any office, bank, shop, store, warehouse, vessel, or building in which valuable things are kept, any person being lawfully therein and put in fear, shall be punished by imprisonment not less than one, nor more than ten years; but if no person was lawfully therein and put in fear, by imprisonment not more than five years, or by fine not exceeding five hundred dollars. Breaking and  
entering a  
dwelling-  
house, or any  
building nam-  
ed, or vessel,  
&c.  
R. S. c. 119,  
§ 8.

SEC. 9. Any permanent building or edifice, usually occupied by any person by lodging therein at night, shall be deemed a dwellinghouse, though such occupant is absent for a time, leaving furniture or goods therein, with an intention to return; but no building shall be deemed a dwellinghouse or part of it, unless connected with, or occupied as part of the dwellinghouse. Dwellinghouse  
defined.  
R. S. c. 119,  
§ 9.

CHAP. 134. description of the offence charged, that the magistrate was authorized to require and take the same.

Bail, how exonerated before and after default upon their recognizance. 1867, c. 110, §§ 1, 2.

SEC. 23. Bail in criminal cases, at any time before default upon their recognizance, may exonerate themselves by surrendering their principal into court, or to the jailer in the county where the principal is held to appear, and delivering to the jailer a certified copy of the recognizance; and the jailer shall receive and detain such principal; and any person, so surrendered, may be afterwards bailed in the same manner as if he had been committed without recognizance. After such default, bail may surrender their principal, as before provided, and the court, on application therefor, being satisfied that the default of the principal was not with the consent or connivance of the bail, may remit the whole or any part of the penalty.

## CHAPTER 134.

### PROCEEDINGS IN COURT IN CRIMINAL CASES.

#### OATH AND DUTY OF GRAND JURY.

- SEC. 1. Clerks of courts to prepare alphabetical lists of grand jurors.
2. Grand jurors' oath.
  3. Form of affirmation.
  4. Election of foreman.
  5. Term of his office.
  6. Oath of witnesses before the grand jury. List to be returned to the court.
  7. Grand jury to present all offences, appoint one to take minutes, and when dismissed may be recalled.
  8. Disclosures improper to be made by grand jurors.

#### BAIL, ARRAIGNMENT AND TRIAL OF CRIMINALS.

- SEC. 9. In what cases persons in prison, on charges of capital offences, may be bailed or discharged, if not indicted.
10. If indicted, when they may claim trial.
  11. Standing mute equivalent to not guilty.
  12. Jury of trial, how impaneled. Of peremptory and other challenges.
  13. One justice may try capital cases; justice of superior court for Cumberland county may try.
  14. Rights of persons indicted for felony to a copy of indictment, if indicted for a capital offence or one punishable with state prison for life, a copy of indictment, list of jurors and witnesses, at expense of the state.
  15. Prosecuting officer may summon witnesses; no fees need be tendered them; no cost for witnesses where no bill found, or for defect of roads.
  16. Punishment for not attending, when summoned as a witness.
  17. Witnesses not to be paid till second or third day in continued cases; costs allowed before arrest or trial, in certain cases; but no extra charges for aid or otherwise, unless on examination of officer on oath or other proof.

SEC. 18. Person arraigned, need not be asked how he will be tried; and dilatory pleas may be rejected unless verified by oath. CHAP. 134.

19. Depositions may be taken out of the state, on request of defendant. Accused may be a witness, at his own request. Husband or wife may testify with the consent of the other.
20. Facts to be tried and challenges allowed as in civil cases, but no grand juror or person with conscientious scruples about the penalty of death, shall sit in a capital case.
21. Jurors' oaths and affirmations.
22. When a person indicted shall, or may not, be present at his trial.
23. View may be ordered by court.
24. When the court may postpone criminal trials, or discharge the jury.

#### PAYMENT OF PRIVATE CLAIMS FROM FORFEITED RECOGNIZANCES.

SEC. 25. Payment of private claims out of forfeited recognizances.

#### EXCEPTIONS, AND BAIL AFTER VERDICT. REVERSAL ON WRIT OF ERROR.

- SEC. 26. Questions of law may be received on report. Accused to give recognizance, or be committed; and, after verdict of guilty against him, only a justice of the supreme judicial court, or a person appointed by the justice who tried the case, can admit him to bail.
27. Reversal of judgment on writ of error.

#### OATH AND DUTIES OF GRAND JURORS.

SEC. 1. Prior to the commencement of each term of the supreme judicial court in any county, to which grand jurors are returned, the clerk of the court shall make out, from the returns on the venires, an alphabetical list of such jurors. Clerks of courts to prepare lists of grand jurors. R. S. c. 134, § 1. See c. 106.

SEC. 2. When the grand jury is to be impaneled, the clerk shall call the first two persons named on the list, and administer the following oath to them: "You, as grand jurors of this county of——, do solemnly swear, that you will diligently inquire and true presentment make of all matters and things given you in charge. The state's counsel, your fellows', and your own, you shall keep secret. You shall present no man for envy, hatred, or malice; nor leave any man unrepresented for love, fear, favor, affection, or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding. So help you God." The other jurors shall then be called, in such divisions as the court orders, and the following oath shall be administered to them: "The same oath which your fellows have taken on their part, you and each of you on your part shall well and truly observe and keep. So help you God." Grand jurors' oath. R. S. c. 134, § 2. 36 Me. 128. 38 Me. 200, 298. 49 Me. 573, 588. 51 Me. 395.

SEC. 3. When any person returned as grand juror is conscientiously scrupulous of taking an oath, he may make affirmation, substituting the word "affirm" instead of "swear;" and also the words "This you do under the pains and penalties of perjury," instead of "So help you God." Form of affirmation. R. S. c. 134, § 3.

CHAP. 134. SEC. 4. The grand jury, having been impaneled and instructed by the court, shall retire in company with an officer to their room, and there elect, by ballot, one of their number for foreman, and give notice thereof to the court, and the clerk shall record it.

SEC. 5. Such foreman shall continue in office during the time for which he was returned; but in case of his sickness or absence, the jury may in like manner elect and announce to the court another foreman.

SEC. 6. The attorney general, county attorney, or foreman of the grand jury, shall swear, or affirm, in the presence of the jury, all witnesses who are to testify before them, and a list thereof shall be returned into court by the foreman before the jury is discharged, and filed and entered on record by the clerk.

SEC. 7. Grand juries shall present all offences cognizable by the court at which they attend; and may appoint one of their number to take minutes of their proceedings to be delivered to the attorney, if the jury so directs; and when they are dismissed before the court adjourns, they may be summoned again, on any special occasion, at such time as the court directs. It is sufficient in every indictment for murder, to charge that the defendant did feloniously, wilfully and of his malice aforethought, kill and murder the deceased, and for manslaughter, to charge that the defendant did feloniously kill and slay the deceased, without setting forth the manner or means of death.

SEC. 8. No grand juror or officer of the court shall disclose, that an indictment for felony is found against any person not in custody or under recognizance, except by issuing process for his arrest, until he is arrested; nor shall any grand juror state how any member of the jury voted, or what opinion he expressed, on any question before them; and the court in charging such jury shall impress on their minds the provisions of this section.

#### BAIL, ARRAIGNMENT AND TRIAL OF PRISONERS.

SEC. 9. Any person in prison, charged with a crime punishable with death, may be bailed or discharged, if he is not indicted at the second term of the court in the county where the crime is alleged to have been committed, when there are two terms there in each year; but when there is only one term a year therein, and the accused has been in prison six months before the first term and is not then indicted, he shall be bailed or discharged.

SEC. 10. Any person in prison under indictment shall be tried or bailed at the first term next after the finding thereof, if he demands it, unless the court is satisfied that some of the witnesses on the part of the state have been enticed away, or detained from court by some cause beyond their control; and all persons under indictment for fel-

ony, if they have been arrested thereon, shall be tried or bailed at the second term after the finding thereof. Any person indicted, although he has not been arrested, is entitled to a speedy trial, if he demands it, in person, in open court. CHAP. 134.

SEC. 11. When any person indicted stands mute, the court shall order the plea of not guilty to be entered, and it shall have the same effect as if he had pleaded not guilty. Being mute.  
R. S. c. 134,  
§ 11.

SEC. 12. When a person, indicted for an offence punishable with death, is put upon his trial, the clerk under the direction of the court, shall place the names of all the traverse jurors summoned and in attendance, in a box, upon separate tickets, and the names, after being mixed, shall be drawn from the box by the clerk, one at a time, for the purpose of constituting a jury of trial. All peremptory challenges, except as herein provided, and all other challenges and objections to the juror drawn, shall be made and determined, and the juror sworn or set aside, before another name is drawn, and so on until the panel is completed. The person indicted shall not challenge peremptorily, more than ten of the jurors while the panel is being formed; but he may, before the trial commences, challenge peremptorily, one of the jurors from the panel. The supreme judicial court, may, by general rules, prescribe the mode of exercising the latter right of challenge. Jury for trial,  
how empanel-  
ed.  
Challenges.  
Rules by S. J.  
C.  
R. S. c. 134,  
§ 12.  
1864, c. 247.  
1867, c. 108.

SEC. 13. One justice of the supreme judicial court may hold a term thereof in any county, except the county of Cumberland, for the trial of capital cases, and exceptions may be taken, as in other cases, to their rulings and decisions. One justice  
may try capi-  
tal cases.  
Justice of su-  
perior court  
in Cumberland  
county, same  
powers.  
1860, c. 133.  
1868, c. 216.  
Rights of per-  
sons indicted  
for felony, &c.  
R. S. c. 134,  
§ 14.  
1870, c. 87.

SEC. 14. The clerk shall, without charge, furnish, to any person indicted for a crime punishable by imprisonment in the state prison, a copy of the indictment; if he is indicted for a crime punishable by death, or imprisonment in the state prison for life, he shall furnish a copy of the indictment; a list of the jurors returned; and process to obtain witnesses, to be summoned and paid at the expense of the state. Competent counsel shall be assigned by the court in capital cases, when it appears that the accused has not sufficient means to employ counsel, and reasonable compensation shall be allowed by the court, to be paid out of the state treasury. One justice  
may try capi-  
tal cases.  
Justice of su-  
perior court  
in Cumberland  
county, same  
powers.  
1860, c. 133.  
1868, c. 216.  
Rights of per-  
sons indicted  
for felony, &c.  
R. S. c. 134,  
§ 14.  
1870, c. 87.

SEC. 15. The prosecuting officer shall have the same power to issue a summons for witnesses in criminal cases as the clerk of the court; and no costs shall be taxed for witnesses before the grand jury in a case where no bill is found, nor in complaints against towns for defect of road, unless they are recognized so to attend, or summoned by order of the grand jury or prosecuting officer; nor shall it be necessary to tender any fees to witnesses summoned in behalf of the state. Prosecuting  
officer may  
summon wit-  
nesses, &c.  
R. S. c. 134,  
§ 15.

CHAP. 135. admitted to bail only by the justice trying him, by some person by him appointed therefor, or by some other justice of the court.

In case of  
error in sen-  
tence, proceed-  
ings.  
1870, c. 90.

SEC. 27. When a final judgment in any criminal case is reversed by the supreme judicial court, upon a writ of error, on account of error in the sentence, the court may render such judgment therein as should have been rendered, or may remand the case for that purpose to the court before whom the conviction was had.

## CHAPTER 135.

### SENTENCE, AND ITS EXECUTION IN CRIMINAL CASES, AND THE LIBERATION OF POOR CONVICTS.

#### WHAT SENTENCE MAY BE AWARDED.

- SEC. 1. No person punished till convicted; and what sentence may be passed, when none is provided by law.
2. No convict sent to state prison less than a year, and when he is to be punished by imprisonment and a fine, he may be sentenced to either or both.
3. Punishment, when convict has before been sentenced to state prison.
4. In what cases sureties to keep the peace may be required in addition to the other punishment.

#### EXECUTION OF SENTENCE.

- SEC. 5. Minutes made by the clerk, when sufficient authority for the officer.
6. Removal of convicts to the state prison, upon sentence.

#### IN CAPITAL CASES.

- SEC. 7. Copy of evidence to be made and certified by judge, upon conviction. Copy of whole record to be sent to governor.
8. Governor and council shall review. Unless pardon or commutation is granted, governor shall issue his warrant for execution in one year after sentence.
9. Disposition of convicts under sentence of death.
10. How and where sentence of death shall be executed, and who may be present.
11. Sheriff's return to be made and filed in the office of secretary of state.

#### LIBERATION OF POOR CONVICTS.

- SEC. 12. Persons imprisoned for non-payment of fines or costs, may be liberated by the sheriff, after thirty days, on giving their notes, and a sworn schedule of their property.
13. Such notes a lien on their real estate, and execution thereon may be proceeded with as in other cases.
14. Penalty for willfully making a false schedule of property.

#### WHAT SENTENCE MAY BE AWARDED.

No person can  
be punished,  
till convicted.  
R. S. c. 135, § 1.  
1860, c. 176.

SEC. 1. No person can be punished for an offence till convicted thereof in a court having jurisdiction of the person and case. When no punishment is provided by statute for an offence, a person convicted thereof shall be imprisoned less than one year or fined not exceeding five hundred dollars. When it is provided that he shall

be punished by imprisonment and fine, or by imprisonment or fine, he may be sentenced to either or both. In all cases where a fine is imposed he may be sentenced to pay the costs of prosecution. CHAP. 135.

SEC. 2. Unless otherwise specially provided, all imprisonments mentioned in this title for the term of one year or more, shall be in the state prison; and all for a less term, in the county jail or house of correction. When it is provided that imprisonment shall be in the county jail, the sentence may be for imprisonment there or in a house of correction; and the sentence may be conditional that the convict shall pay a fine and costs, but if not paid in ten days, then he shall be imprisoned not more than six months. No convict sent to state prison less than a year, &c.  
R. S. c. 135, § 2.

SEC. 3. When a person is convicted of a crime punishable by imprisonment in the state prison, and it is alleged in the indictment therefor, and proved or admitted on trial, that he had been before convicted and sentenced to a state prison by any court of this state, of any other state, or of the United States, whether pardoned therefor or not, he may be punished by imprisonment in the state prison for life, or any term of years. Punishment, when convict has before been sentenced to state prison.  
R. S. c. 135, § 3.

SEC. 4. In addition to the punishment prescribed by law, the court may require any person convicted of an offence not punishable by death or imprisonment in the state prison, to recognize to the state, with sufficient sureties, in a reasonable sum, to keep the peace and be of good behavior for a term not exceeding two years, and stand committed till he so recognizes. In what cases, sureties to keep the peace may be required, &c.  
R. S. c. 135, § 4.

#### EXECUTION OF SENTENCES.

SEC. 5. When a convict is sentenced to pay a fine or costs, or be imprisoned in the county jail or house of correction, the clerk of the courts, as soon as may be, shall make out and deliver to the sheriff or some officer in court, a transcript of the minutes of the conviction and sentence duly certified by him; and this shall be a sufficient authority for the officer to execute such sentence. Minutes made by the clerk, when authority for officer.  
R. S. c. 135, § 5.

SEC. 6. When any convict is sentenced to confinement in the state prison, such clerk shall make out a warrant under seal of the court, directed to the warden of the prison, requiring him to cause such convict, without needless delay, to be removed from the county jail to the state prison; and the warden and all sheriffs and jail keepers are required strictly to obey its directions; and the clerk, as soon as may be, shall deliver such warrant to the sheriff of the county, and he shall forthwith deliver it to said warden. The sheriff shall provide the convict with comfortable clothing in which to be removed to the state prison. Removal of convicts to state prison upon sentence.  
R. S. c. 135, § 6.  
1867, c. 96.

#### EXECUTION OF SENTENCE IN CAPITAL CASES.

SEC. 7. In case of trial of an indictment for any capital offence, the judge presiding shall, at the expense of the county, employ suitable An accurate copy of evidence in capi-

CHAP. 135. ble means to preserve an accurate and full copy of the evidence; and in case of conviction, he shall correct and certify such evidence to be a true copy of all the evidence in the case. And in case of sentence of death awarded upon such conviction, it shall be the duty of the clerk forthwith to transmit to the governor a true and attested copy of such evidence; and in all cases of sentence of death, the clerk shall forthwith transmit to the governor a copy of the whole record.

SEC. 8. Upon receiving such record and evidence, it shall be the duty of the governor and council carefully to review the whole case, and unless they think proper to pardon the convict, or commute his sentence, the governor shall, upon the expiration of one year after the day of the sentence, issue his warrant, as provided in sections nine and ten of this chapter.

SEC. 9. When any person is convicted of a crime punishable with death, and sentenced therefor, he shall at the same time be sentenced to solitary confinement in the state prison till such punishment is inflicted; but he shall not be executed until the whole record of such proceedings or case is certified by the clerk of said court, under the seal thereof, to the supreme executive authority of the state, and a warrant is issued by said executive authority, under the great seal of the state, directed to the sheriff or one of his deputies, of the county wherein the state prison is situated, commanding him to carry said sentence of death into execution.

SEC. 10. The sentence of death shall, in all cases, be inflicted by hanging the convict by the neck till he is dead, and be executed, at the time directed in the warrant, within the walls or inclosed yard of the state prison; and the sheriff of the county, unless prevented by sickness, or other casualty, and two deputies designated by him, shall be present at the place of execution; he shall request the county attorney and twelve citizens, including a surgeon or physician, and permit the convict's counsel, relatives, and such minister of the gospel as he may desire, such officers of the prison, deputies, constables, and military guard as the sheriff sees fit, but no others, to be present.

SEC. 11. When a sheriff inflicts the sentence of death as aforesaid, he shall immediately make return of the warrant therefor, under his hand, with his doings thereon, to the office of the secretary of state; and file an attested copy of the warrant and return in the office of the clerk of the court where the conviction was had; and the clerk shall file the same with the indictment, and subjoin to the record a brief abstract of such return.

tal cases to be made.

In case of conviction to be certified by judge.

In case of sentence of death copy of record and evidence to be sent to governor by clerk of court. 1869, c. 72, § 1.

Governor and council to review the record and evidence, and unless pardon or commutation of sentence is granted by them, the governor at expiration of one year, except in case of review, to issue warrant for execution. 1869, c. 72, § 2.

Disposition of convicts under sentence of death.

R. S. c. 135, § 7. 1869, c. 72, § 4.

How and where sentence of death shall be executed, &c.

R. S. c. 135, § 8.

Sheriff's return to be made and filed in the office of the secretary of state.

R. S. c. 135, § 9.

## LIBERATION OF POOR CONVICTS.

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SEC. 12. Any convict, sentenced to pay a fine or costs, and committed for default thereof and for no other cause, who is unable to pay the same, may be liberated by the sheriff after thirty days from his commitment, by giving his note for the amount due, to the treasurer of the same county, accompanied by a written schedule of all his property of every kind, signed and sworn to before the sheriff, jailer, or any justice of the peace or trial justice, and the sheriff shall deliver the same to said treasurer for the use of the county within thirty days.

Persons imprisoned for non-payment of fines or costs, &c.  
R. S. c. 135, § 10.  
1865, c. 300 § 2

SEC. 13. Such note shall be and continue a lien on all the maker's real estate till the same is fully paid; and if judgment is rendered on it in favor of the treasurer, the same proceedings may be had on the execution as in other cases of contract.

Such notes a lien on their real estate, &c.  
R. S. c. 135, § 11.

SEC. 14. If such convict is convicted of knowingly and willfully making a false schedule, on oath, as to the nature or amount of his property, he shall receive no benefit from his liberation, but may be imprisoned again till the performance of the original sentence.

Penalty for making a false schedule of property.  
R. S. c. 135, § 12.